Held, a new trial is granted. *Beakley* v. *Optimist Printing Co.* (Ida.), 152 Pac. 212.

A chance verdict results when the jury resorts to some other method of determination than a consideration of the merits of the case alone. *Goodman* v. *Cody,* 1 Wash. 329, 34 Am. Rep. 808. Thus a verdict reached by placing a coin and guessing heads or tails is a chance verdict; and, as such, is ground for a new trial. *Donner* v. *Palmer,* 23 Cal. 40. Likewise where ballots were cast, and a verdict rendered according as the plaintiff or defendant received a majority. *Mitchell* v. *Ehle,* 10 Wend. (N. Y.) 595; *Houk* v. *Allen,* 126 Ind. 568, 25 N. E. 897, 11 L. R. A. 706. So, also, it is held that a quotient verdict is within the category of chance verdicts and affords ground for a new trial, where there is a precedent agreement that the result shall be binding. *Goodman* v. *Cody, supra; Pawnee Ditch & Improvement Co.* v. *Adams,* 1 Colo. App. 250, 28 Pac. 662; *International Agricultural Corp.* v. *Abercrombie,* 184 Ala. 244, 63 South. 549, 49 L. R. A. (N. S.) 415. But the cases hold with practical unanimity that a verdict reached by the quotient method is unobjectionable in the absence of an agreement to abide by the result. *McDonnell* v. *Pescadero & San Mateo Stage Co.,* 120 Cal. 476, 52 Pac. 725; *Rambo* v. *Empire District Electric Co.,* 90 Kan. 390, 133 Pac. 553; *Pushcart* v. *N. Y. Shipbuilding Co.,* 85 N. J. L. 525, 89 Atl. 980. And it has been so held even in criminal cases. *Thompson* v. *Commonwealth,* 8 Gratt. (Va.) 637; *Cochlin* v. *People,* 93 Ill. 410.

WILLS—CONSTRUCTION—DEED OR WILL.—An instrument in form a deed, which was to take effect only upon the death of the maker, reserved in him during his life a power of disposal over the personalty and a life-estate to himself and wife in the realty; and was delivered to the grantee some years after its execution. On the death of the maker and his wife, a suit in equity was brought by the heirs-at-law against the grantee to settle title to the property. *Held,* the instrument is testamentary in character and not a deed. *Seay* v. *Huggins* (Ala.), 70 South. 113.

In ascertaining the legal effect of written instruments the intention of the maker, as gathered from the four corners of the instrument, is the pole star of construction. *Sims* v. *Brown,* 252 Mo. 58, 158 S. W. 624. If it appears doubtful from the face of the instrument, however, whether the person executing it intended it to operate as a deed or will, the attending facts and circumstances may be put in proof as aids in discovering the intention. *Phifer* v. *Mullis,* 167 N. C. 405, 83 S. E. 582. The instructions given to the draughtsman as to the nature of the paper he was asked to draw may be thus shown; also whether there was an entire or a partial disposition of the property of the maker; also whether there was a delivery of the instrument; also statements of the deceased made at the time of executing the instrument; also the inclusion of after acquired property within the operation of the instrument and any other circumstance which furthers the determination of the maker's intention. *Sharp* v. *Hall,* 86 Ala. 110, 5 South. 497, 11 Am. St. Rep. 28 and note; *Crocker* v. *Smith,* 94 Ala. 295, 10 South. 258, 16 L. R. A. 576; *Lauck* v. *Logan,* 45 W. Va. 251, 31 S. E. 986. Where the legal effect of

the instrument is clear and unambiguous, however, the law will give it such effect regardless of the surrounding circumstances and the expressed intention of the maker. *Habergham* v. *Vincent,* 2 Ves. Jr. 204; *Sewell* v. *Slingluff,* 57 Md. 537.

Where such ambiguity exists and it is impossible for the instrument to take effect as a deed for lack of some formality, if the equities of the case are evenly balanced, the law will pronounce the instrument a will, *ut res valeat magis quam pereat. Crocker* v. *Smith, supra.* See *Lauck* v. *Logan, supra.*

The true test in determining the legal effect of such an instrument would seem to be whether or not a present interest passes by virtue of its provisions. If so, the instrument is a deed. *Luack* v. *Logan, supra.* If no present interest passes under the instrument and its legal effect attaches and accrues only upon the death of the maker, it is a will. *Gillham* v. *Mustin,* 42 Ala. 365. The mere reservation by the maker during his life of an interest in, or power of disposal over, the property granted will not of itself render the instrument of a testamentary character, since a present interest may pass with a deferred right to the enjoyment thereof. *Tompson* v. *Brown,* 3 Myl. & K. 32; *Mays* v. *Fletcher,* 137 Ga. 27, 72 S. E. 408. And even though express words of immediate grant are used, if upon the whole, the instrument shows an intention to operate only upon the death of the maker, it will be construed as a will. *Habergham* v. *Vincent, supra.* The same instrument cannot, however, be both a deed and a will. *Thompson* v. *Johnson,* 19 Ala. 59. Though an instrument which employs variant and distinct terms in reference to different property, and which clearly indicates the intention of giving the one a testamentary and the other a present operation, may be a will in part and a deed in part. *Robinson* v. *Schly,* 6 Ga. 515; *Kinnebrew* v. *Kinnebrew,* 35 Ala. 628.

An examination of the authorities seems to show that the principles as above laid down are generally concurred in by the courts. There is an alarming divergence in the decisions, however, in the constructions of such ambiguous instruments, as to whether or not an intention to pass a present interest is evidenced. As a rule, the particular circumstances of each case seem to govern largely. In the instant case the instrument was so framed that the court might with reason have held that it was either a deed or a will.